

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

ADRIAN R. BROWN v. STATE OF TENNESSEE

Appeal from the Criminal Court for McMinn County
No. 08-128 Carroll L. Ross, Judge

No. E2008-02129-CCA-R3-PC - Filed April 9, 2009

The petitioner, Adrian R. Brown, appeals the McMinn County Criminal Court's dismissal of his petition for post-conviction relief. The State has filed a motion requesting that this court affirm the post-conviction court's judgment pursuant to Rule 20, Tennessee Court of Criminal Appeals. Upon review of the record and the parties' briefs, we conclude that the post-conviction court properly dismissed the petition. Accordingly, the State's motion is granted, and the judgment of the post-conviction court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed
Pursuant to Rule 20, Rules of the Court of Criminal Appeals.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., AND D. KELLY THOMAS, JR., JJ., joined.

Adrian R. Brown, Pro se.

Robert E. Cooper, Jr., Attorney General and Reporter, and Benjamin A. Ball, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

In November 1995, the petitioner pled guilty to selling one-half gram or more of cocaine, a Class B felony, and three counts of selling less than one-half gram of cocaine, a Class C felony. According to the judgment of conviction forms, the trial court sentenced him to eight years for the Class B felony and to six years for each Class C felony, all to be served concurrently, for an effective sentence of eight years in confinement. The effective sentence expired in 2003. On April 12, 2005, the appellant was sentenced for two convictions in federal court. Based on his four prior felony convictions, the petitioner was classified as a career offender for federal sentencing purposes.

On March 31, 2008, the petitioner filed a petition for post-conviction relief or, in the alternative, a petition for writ of error coram nobis in which he claimed that he pled guilty unknowingly and involuntarily and that he was denied the effective assistance of counsel. Specifically, the petitioner claimed, in pertinent part, that trial counsel allowed him to plead guilty

and receive an eight-year-sentence for each of his four convictions when the range of punishment for a Range I, standard offender convicted of a Class C felony was only three to six years. He also claimed that the judgment of conviction forms for the three Class C felonies were later improperly changed to reflect that he received six-year sentences for those convictions. Finally, the petitioner claimed that due process principles required tolling the post-conviction one-year statute of limitations because trial counsel never consulted with him about an appeal. The post-conviction court dismissed the petition because it was untimely filed.

Tennessee Code Annotated section 40-30-102(a) provides that a person must file a petition for post-conviction relief within one year of the date on which the judgment became final or consideration of the petition will be time-barred. The statute emphasizes that “[t]ime is of the essence of the right to file a petition for post-conviction relief or motion to reopen established by this chapter, and the one-year limitations period is an element of the right to file [such an] action and is a condition upon its exercise.” Tenn. Code Ann. § 40-30-102(a). The petition in this case was filed well beyond the one-year statute of limitations. Section 40-30-102(b) provides that a petition may be filed outside the limitations period if the petition (1) is based on a constitutional right that did not exist at trial, (2) is based on new scientific evidence, or (3) seeks relief from a sentence that was enhanced because of a previous conviction that was later held to be invalid. None of those exceptions applies in this case.

Regarding the petitioner’s claim that due process requires tolling the statute of limitations, our supreme court explained in Williams v. State, 44 S.W.3d 464, 471 (Tenn. 2001), that the statute of limitations may be tolled if circumstances beyond the petitioner’s control precluded him from actively raising his post-conviction claims in a timely manner. However, the facts in this case do not warrant tolling. The petitioner pled guilty in 1995 but did not raise any issue regarding counsel’s failure to appeal his sentence until he filed his petition for post-conviction relief thirteen years later. Therefore, this case does not fall under the purview of Williams. Accordingly, the State’s motion is granted, and the judgment of the post-conviction court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

NORMA McGEE OGLE, JUDGE